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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,322	12/10/1999	STEPHEN J. ZACK	533/198	8722

56015 7590 10/18/2005	EXAMINER
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ART UNIT	PAPER NUMBER
2611	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action *Before the Filing of an Appeal Brief*	09/458,322	ZACK ET AL.
	Examiner	Art Unit	
	Son P. Huynh	2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>13 September 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*32-44*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-303 (Rev. 7-05)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20051011

Continuation of 11. does NOT place the application in condition for allowance because: DETAILED ACTION
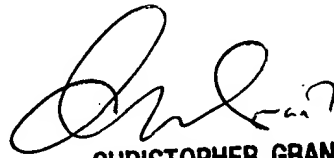
Response to Arguments

Applicant's arguments filed 09/13/2005 have been fully considered but they are not persuasive.

Applicant argues "wherein said multiplexing of formatted non-content data is on a bandwidth available basis that is predicted based on said multiplexing of said formatted content streams" is not taught, suggested or disclosed in Adams and Voois (page 8, paragraph 2).

In response, this argument is respectfully traversed. Adams discloses the application data (read on the claimed "non-content data") is transmitted in Internet Protocol (IP) format (col. 3, lines 40-45) or the application data stored in application buffer 402 is preferably in the form f an MPEG-2 transport packet (col. 4, lines 34-51). Thus, Adams discloses formatting non-content data (application data) in IP format or MPEG-2 format. In addition, Adams further discloses a statistical multiplexer 208 for multiplexing application data into the wasted bandwidth of the video stream (col. 6, line 61-col. 4). The application data is filled in the available bandwidth of the video stream when all video buffers are empty (col. 5, lines 1-8). The non-video data (or application data) is controlled so as to fill available bandwidth in the 6 MHz multiplexed channel (col. 7, lines 25-27). Therefore, the claimed feature of "said multiplexing of formatted non-content data is on a bandwidth available basis that is predicted based on said multiplexing of said formatted content streams." is broadly met by multiplexing the formatted application data (in IP format or MPEG-2 format) is on the available bandwidth basis (waste bandwidth or when the video buffers are empty) that is predicted/determined by the selector based on the multiplexing/selecting of the formatted (preferably in MPEG-2) video streams. Wherein, the limitation of "predicting bandwidth availability" is broadly met by determining if the video buffers are empty (col. 5, lines 1-8), and the limitation of "selectively multiplexing formatted non-content data into said output stream on a bandwidth availability basis" is broadly met by selecting the formatted application data for transmit on output stream when video buffers are empty - col. 5, lines 1-8; col. 6, line 61-col. 7, line 27).

Furthermore, Voois discloses a multiplexer for receiving video data and other types of data from different sources. The data received from different sources is formatted, and multiplexed for transmission over communication channel 12. The multiplexer/data processing equipment (MDPE) 24 monitors the available channel bandwidth and, based on its capability to transmit additional data, collects and formats the data collected from each of the input sources so as to maximize the amount of data to be transmitted over the channel 12 (col. 5, lines 5-35; col. 6, line 57-col. 7, line 67). Thus, the claimed feature of "multiplexing of formatted non-content data is on a bandwidth availability basis that is predicted based on said multiplexing of said formatted content streams" is broadly met by multiplexing of formatted additional data is on a bandwidth availability basis that is determined based on the multiplexing of formatted content streams (content stream with high-priority data).

For the reason given above, rejections on claims 32-44 are maintained as discussed in the Final Office Action, dated 07/13/2005

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